IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

**JUDGMENT**
IN
**S.B. Criminal Appeal No.849/2002**

Rajesh Kumar S/o Shri Ram Kishan
AND
Rajendra @ Ajay S/o Shri Ram Kishan
...Accused-Appellants
Versus
The State of Rajasthan through P.P.
...Respondent

**Date of Judgment :::: 18th of January, 2007**

PRESENT
**Hon'ble Mr. Justice Narendra Kumar Jain**

Shri M.P. Khandelwal, Amicus Curiae
Shri Arun Sharma, P.P., for the State
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**//Reportable//**

**By the Court**:-

This appeal under Section 374 (2) of the Code of Criminal Procedure, on behalf of two accused-persons – Rajesh Kumar and Rajendra @ Ajay, is directed against the judgment and order dated 16th of May, 2002 passed by the Additional Sessions Judge (Fast Track) No.1, Bundi, in Sessions Case No.74/2001, whereby each of the accused-appellants has been convicted under Section 395, IPC, to seven years rigorous imprisonment and a fine of Rs.500/-; in default of payment of fine, to further undergo one

month's additional simple imprisonment and, under Section 397, IPC, to seven years rigorous imprisonment and a fine of Rs.500/-; in default of payment of fine, to further undergo one month's simple imprisonment.

PW-10 Shiv Singh recorded a 'parcha bayan' Exhibit P-1 of Sukhpal Singh (PW-1) at Bed No.9, of Surgical Ward, Government Hospital, Bundi, wherein it was stated that on 9th of February, 2000, he was on duty along with Bhanwar Lal, Constable, at Ramganj Balaji Petrol Pump and at about 3.30 at night two persons armed with weapons entered in the petrol pump and committed a dacoity. They snatched 30-35 thousand rupees from Surendra, the salesman of the Petrol Pump. It was also stated that other accused-persons were standing outside the Petrol Pump.

On the basis of this 'parcha bayan', an FIR No.27/2000 (Exhibit P-25) was registered at police Station Sadar, District Bundi under Sections 395 and 397 IPC and investigation commenced.

As per the statement of PW-11 Satyapal Singh, the accused-persons were arrested on 24th of September, 2000, in case no.267/2000, registered under Sections

323, 332, 353, 342, 307, 394 and 34 IPC and under Sections 3/25 and 4/25 of the Arms Act, at Police Station Udyog Nagar, Kota, which was relating to Das Petrol Pump, and during investigation of that case it came to the knowledge of Satyapal Singh (PW-11) that these accused-persons committed dacoity at Balaji Petrol Pump, Bundi, also, for which the present FIR No.27/2000 was registered. The accused-appellants were thereafter arrested in the present case vide arrest-memo (Exhibit P-6 and Exhibit P-7) dated 10th of December, 2000. Thereafter the accused Rajendra gave an information (Exhibit P-9) under Section 27 of the Evidence Act on 14th of December, 2000, about magazine of rifle and in pursuance of that information the magazine of rifle was recovered at the instance of accused Rajendra @ Ajay vide recovery-memo Exhibit P-10 dated 14th of December, 2000. The identification parade was also conducted and, after completion of investigation, a challan was filed against both the accused persons. The trial court framed charge for the above offences, which was denied by accused-persons. Thereafter, the trial was conducted and after completion thereof, the accused-persons were convicted and sentenced, as mentioned above.

The learned counsel for the appellants raised two-fold contentions. The first contention is that even as per the prosecution case there were only two persons, who committed dacoity and in absence of five persons in number, the offence under Section 395 or 397 of the IPC cannot be said to be made out. In support of his contention, he referred the 'parcha bayan' (Exhibit P-1) dated 10th of February, 2000, wherein PW-1 Sukhpal Singh has stated that two persons entered in the petrol pump and committed dacoity and they snatched 30-35 thousand rupees from Surendra, the salesman of the petrol pump, therefore, in absence of five persons in number, the learned trial court committed an illegality in convicting the accused persons for the above offences.

The second contention of the learned counsel for the appellants is that the learned trial court has convicted the accused-persons only on the basis of evidence relating to identification of the accused-persons, which was not proved properly and the same was doubtful and in support of his contention he referred the statement of prosecution witnesses particularly the statement of PW-6 Rajendra, who in his cross-examination, admitted that the accused-

persons were brought at the petrol pump and they were shown to him earlier before the identification parade took place, therefore, the contention of the learned counsel for the appellant is that the identification parade in the present case is doubtful and in case the said evidence is discarded then there is no other evidence to connect the accused-persons with the crime and they are liable to be acquitted from the charge framed against them.

The learned Public Prosecutor supported the judgment and the order passed by the trial court and, by referring the prosecution evidence, contended that from the evidence on the record it is clear that there were not only five but six persons were present at the time of committing the offence of dacoity and further that the evidence of identification is legal and there is no lacunae in it. He contended that even if PW-6 Rajendra, in his cross-examination, admitted that the accused persons were shown to him earlier to identification parade took place, it does not mean that other evidence in this regard is to be discarded. He referred the statement of PW-1 Sukhpal and PW-2 Bhanwar, who have identified the accused-persons, therefore, he contended that there is no merit in this

appeal and the same may be dismissed.

I have considered the submissions of learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

Exhibit P-1, the 'parcha bayan' of Sukhpal (PW-1) was recorded on 10th of February, 2000, by PW-10 Shivsingh at Bed No.9 of Surgical Ward, Government Hospital, Bundi, wherein he stated the details of incident relating to dacoity committed at Ramganj Balaji Petrol Pump, and about the injuries sustained by him as well as another injured person Bhanwar Lal (PW-2). The FIR (Exhibit P-25) was registered for the offence under Sections 395 and 397 of the IPC. The accused-persons were arrested on 10th of December, 2000, vide arrest-memos Exhibit P-6 and Exhibit P-7. The site-plan (Exhibit P-8) was prepared in the case. During investigation of the case, the accused Rajendra gave an information (Exhibit P-9) on 14th of December, 2000, while he was in custody, about magazine of rifle used in the present incident and, in pursuance of the said information, the magazine of rifle was recovered on 14th of December, 2000, vide recovery-memo, Exhibit P-

10. Thereafter the identification-parade was also conducted in respect of both accused-persons. Accused Rajesh was rightly identified by Sukhpal (PW-1) vide identification-parade-memo Exhibit P-2, by Bhanwar Lal (PW-2) vide identification-parade-memo Exhibit P-4, by Surendra Sharma (PW-5) vide identification-parade-memo Exhibit P-18. Accused Rajendra was rightly identified by Sukhpal (PW-1) vide identification-parade-memo Exhibit P-3, by Bhanwar Lal (PW-2) vide identification-parade-memo Exhibit P-5, by Surendra Sharma (PW-5) vide identification-parade-memo Exhibit P-17 and by Rajendra (PW-6) vide identification-parade-memo Exhibit P-20.

The identification-parade was conducted in presence of PW-9 Asha Kumari Sharma, the Additional Civil Judge (Junior Division) & Judicial Magistrate No.1, Bundi, who has proved the identification parade conducted by her i.e. Exhibit P-2 to Exhibit P-5 and Exhibit P-17 to Exhibit P-20.

PW-1 Sukhpal Singh, PW-2 Bhanwar Lal, PW-5 Surendra Kumar Sharma and PW-6 Rajendra were the eye witnesses to the incident. PW-1 Sukhpal Singh has narrated the entire story of the incident and he

rightly identified both the accused-persons. PW-2 Bhanwar Lal also identified both the accused-persons rightly during identification parade. In cross-examination PW-1 and PW-2 denied the fact that accused-persons were shown to them before identification parade took place in the matter on 2.1.2001. PW-3 Jagannath Singh, the S.H.O., has proved the other documentary evidence of the prosecution including the arrest-memo Exhibit P-6 and Exhibit P-7, the site-plan Exhibit P-8, the information under Section 27 of the Evidence Act (Exhibit P-9), the recovery-memo of magazine Mark-4, 303 Bore (Exhibit P-10) and the map of the place from where the recovery of magazine was made (Exhibit P-11).

PW-4 Vinod Singh has proved Exhibit P-10 and Exhibit P-11. PW-5 Surendra Kumar Sharma was working at Balaji Petrol Pump, where the incident took place, therefore, he was also eye-witness and he has also narrated the story of incident and he rightly identified both the accused-persons before PW-9 Asha Kumari Sharma as well as before the trial court. PW-5 has also proved Exhibit P-12 to Exhibit P-18.

PW-6 Rajendra Kumar did not identify accused

Rajesh but he rightly identified accused Rajendra vide identification-parade-memo Exhibit P-20. He was also eye-witness to the incident and proved the prosecution case. PW-7 Dr. O.P. Verma, who medically examined both the injured persons PW-1 Sukhpal Singh and PW-2 Bhanwar Lal, proved their injury-reports and X-ray-report. Exhibit P-21 is the injury-report of Sukhpal Singh and Exhibit P-22 is his X-ray report. Exhibit P-23 and Exhibit P-24 are the injury-report and X-ray report of PW-2 Bhanwar Lal. PW-8 Mirza Galib has proved Exhibit P-1, the 'parcha bayan' of injured Sukhpal and FIR Exhibit P-25. PW-9 Asha Kumari Sharma, the Additional Civil Judge (Junior Division) & Judicial Magistrate, No.1, Bundi, proved the identification-parade-memos Exhibit P-2 to Exhibit P-5 and Exhibit P-17 to Exhibit P-20. PW-10 Shivsingh has also corroborated the prosecution evidence. PW-11 Satyapal Singh stated before the trial court that he arrested accused-persons in the case No.267/2000, registered at the Police Station Udyog Nagar, Kota.

So far as participation of five or more persons in the incident is concerned, it is clear from the statement of PW-1 Sukhpal Singh, PW-2 Bhanwar Singh, PW-5 Surendra and PW-6 Rajendra that there were six

persons present at the time of commission of the offence and out of them, two persons entered in the office of Petrol Pump and committed dacoity and snatched 35-40 thousand rupees from the salesman.

The above discussion of prosecution evidence reveals that there were sufficient evidence of identification-parade of the accused-appellants and it is also clear that more than five persons were there who participated in the incident.

I have also examined the finding of the learned trial court, who has discussed the prosecution evidence, in detail, and has recorded a finding that there is sufficient evidence against the appellants to hold them guilty for the above charges. I do not find any illegality or perversity in the finding of the learned trial court.

In view of the above discussion, I do not find any force in both the contentions of learned counsel for the appellants.

Consequently, I do not find any merit in this appeal and the same is accordingly dismissed.

**(Narendra Kumar Jain) J.**

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